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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ALADDIN DINAALI, Plaintiff and Appellant, v. SHARIAR ROHANI, Defendant and Respondent.	B245126 (Los Angeles County Super. Ct. No. BC427532)

APPEAL from a judgment and order of the Superior Court of Los Angeles County,
Daniel Buckley, Judge. Affirmed.

Aladdin Dinaali, in pro. per., for Plaintiff and Appellant

Law office of Ehsan Afaghi and Ehsan Afaghi for Defendant and Respondent.

INTRODUCTION

Plaintiff Aladdin Dinaali appeals the trial court's granting of summary judgment as to his claims for intentional interference with contractual relations and fraud, and order awarding costs. Plaintiff asserts that the court improperly excluded evidence that created a triable issue of material fact as to the intentional interference with contractual relations claim, wrongfully considered Plaintiff's argument regarding the sufficiency of the pleadings for fraud, and lacked jurisdiction to award costs. We affirm summary judgment because unrebutted evidence established that Defendant Shariar Rohani had no knowledge of the existence of the contract at issue in the interference claim, and Plaintiff's alleged damages are too remote, uncertain, and speculative to support a cause of action for fraud. We also conclude the court had jurisdiction to award costs because the award was incidental to the court's final judgment.

FACTS AND PROCEDURAL BACKGROUND

Plaintiff is one of the surviving grandchildren of Iranian recording artist and actress, Ezat Roohbakhsh. Defendants Shariar and Anoushirvan Rohani[1] are brothers and are related to Plaintiff through Anoushirvan's marriage to one of Roohbakhsh's descendants. When Roohbakhsh died, she left behind a catalog of her musical recordings and memorabilia, which is the center of the present dispute. Bijan Saketi (another Roohbakhsh relative) had possession of this catalog following Roohbakhsh's death. Plaintiff allegedly entered into a verbal contract with Saketi to obtain the catalog. Instead of giving the catalog to Plaintiff, Saketi allegedly gave the catalog to Anoushirvan and his wife.

Plaintiff sued Defendants Shariar and Anoushirvan for (1) intentional interference with contractual relations, and (2) fraud and deceit. Shariar answered the complaint, and then moved for judgment on the pleadings, which the court denied. Shariar subsequently moved for summary judgment, arguing that Plaintiff could not establish elements of the

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[1] We refer to Shariar and Anoushirvan Rohani by their first names for the sake of clarity and not out of disrespect.

interference with contractual relations claim, and that Plaintiff failed to sufficiently plead fraud. Plaintiff opposed the motion, relying on declarations from his daughter and ex-wife, and requesting judicial notice of an email from Saketi. The majority of the evidence provided by Plaintiff in opposition to the motion for summary judgment was excluded by the trial court per Shariar's motion to strike. The trial court granted summary judgment as to both of Plaintiff's claims against Shariar, finding that Shariar lacked knowledge of the contract and Plaintiff failed to provide evidence to contradict Shariar's declaration as to his lack of knowledge. The court entered judgment against Plaintiff, ordering Plaintiff to pay Shariar's costs without specifying the amount of costs. After reviewing Shariar's memorandum of costs and Plaintiff's motion to tax costs, the court ordered Plaintiff to pay $975.00 in costs to Shariar. The present appeal is solely in regard to the claims against Shariar and Shariar's motion for summary judgment.

DISCUSSION

1. *Plaintiff's Claim for Intentional Interference with Contractual Relationship Fails Because Shariar Had No Knowledge of the Contract*

Plaintiff argues that the court improperly granted summary judgment as to his claim for intentional interference with a contractual relationship. We review the trial court's ruling on a motion for summary judgment de novo, considering all of the evidence in the moving and opposing papers. (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 717.) "We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party." (*Ibid.*) A party moving for summary judgment "bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850, fn. omitted (*Aguilar*).) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Ibid.,* fn. omitted.)

"A defendant bears the burden of persuasion that 'one or more elements of' the 'cause of action' in question 'cannot be established,' or that 'there is a complete defense' thereto. [Citation.]" (*Aguilar*, *supra*, 25 Cal.4th at p. 850.) In general, "the party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact. . . . A prima facie showing is one that is sufficient to support the position of the party in question. [Citation.]" (*Id.* at pp. 850–851, fns. omitted.) "The purpose of summary judgment is to separate those cases in which there are *material* issues of fact meriting a trial from those in which there are no such issues." (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 162.)

At issue is whether Shariar established that Plaintiff could not prove an element of intentional interference with contractual relations. "The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.)

Here, the court found and we agree that Shariar established that he lacked knowledge of the contract between Plaintiff and Saketi, and that Plaintiff failed to rebut this with admissible evidence. In support of his motion for summary judgment, Shariar attested that he knew nothing about the verbal contract between Plaintiff and Saketi. He explained that he had only met Plaintiff twice and that he was never made aware of any agreements regarding the recordings or other materials related to Ezat Roohbakhsh. Based on this evidence, the burden of production shifted to Plaintiff to produce evidence that Shariar had knowledge of the contract.

a. *Statements made in Saketi's Email Do Not Create a Triable Issue of Material Fact Because They Are Inadmissible Hearsay*

Plaintiff asserts that an email he received from Saketi indicated that Shariar had knowledge of the contract and created a triable issue of material fact barring summary judgment. In order to rely on this email as evidence in his opposition to the motion for summary judgment, Plaintiff requested the court to take judicial notice of the email pursuant to Evidence Code sections 452, 453, and 454. The court refused to do so, explaining that it "cannot take judicial notice of hearsay statements asserted in court filings, [despite its ability to] take judicial notice of the existence of such documents."

On appeal, Plaintiff asserts that the court erred in refusing to take judicial notice and should have taken judicial notice of it under Evidence Code section 452 as a record of the court because it was attached to the filed complaint. "We review the trial court's evidentiary rulings on summary judgment for abuse of discretion. [Citations.] As the part[y] challenging the court's decision, it is [Plaintiff's] burden to establish such an abuse, which we will find only if the trial court's order exceeds the bounds of reason." (*DiCola v. White Brothers Performance Products, Inc.* (2008) 158 Cal.App.4th 666, 679.)

Evidence Code Section 452, subdivision (d) states that a court may take judicial notice of records of any court of this state. Nonetheless, "[t]he hearsay rule applies to statements contained in judicially noticed documents, and precludes consideration of those statements for their truth unless an independent hearsay exception exists." (*North Beverly Park Homeowners Assn v. Bisno* (2007) 147 Cal.App.4th 762, 778.) Hearsay is an out-of-court statement that is offered for the truth of the matter asserted, and is generally inadmissible. (Evid. Code, § 1200, subd. (a).)

Here, Plaintiff is attempting to use Saketi's alleged email statements for their truth. In the email, Saketi stated that he originally promised the Roohbakhsh catalog to Plaintiff, but was deceived by Defendants to give the catalog to them instead. Plaintiff asserts that this email completely "corroborates all allegations of the complaint." Plaintiff's intention in relying on the email is clear: to use the email's assertions

regarding the contract and Defendants' involvement in obtaining the catalogs for their truth. Thus, the email is clearly hearsay. Plaintiff has failed to propose any exception to the hearsay rule that would render the statements admissible, and we conclude that no exception is applicable. The court's evidentiary ruling excluding these statements was thus not an abuse of discretion.

Additionally, the email fails to support Plaintiff's argument that Shariar had knowledge of the alleged contract between Plaintiff and Saketi. Rather, the email stated that Anoushirvan and his wife had knowledge of the contract, specifying that Anoushirvan's wife became upset when she heard that Saketi intended to give the catalog to Plaintiff. The email stated that Anoushirvan and his wife obtained the catalog from Saketi's brother, remastered it, and tried to market the music in the United States. As to Shariar, the email stated that Shariar "fooled" Saketi into believing that Saketi could live with Shariar in Los Angeles, and that Shariar lied to Saketi when he said he "would consider getting [Saketi] into [the] music business." The email indicated that the purpose of these lies was to obtain the Roohbakhsh catalog. But, the email never stated that Shariar knew of Plaintiff's alleged contract with Saketi. We conclude that it cannot be reasonably inferred that Shariar knew that Plaintiff had a contract with Saketi based on Plaintiff's aforementioned allegations. Shariar could have made such promises to Saketi in order to obtain the catalog even without knowing about the contract.

Thus, not only are the statements in the email inadmissible, but even if admitted as evidence, they do not support Plaintiff's argument that Shariar had knowledge of the contract. Therefore we affirm the trial court's rulings as to the email evidence.

b. *The Declarations Fail to Create a Triable Issue of Material Fact Because They Fail to Show Each Declarant's Personal Knowledge and Competency*

Plaintiff also argues that the declarations from his daughter, Daalina Dinaali, and his wife, Fariba Dinaali, established Shariar's knowledge of the contract. In each declaration, his wife and daughter stated that they learned of an agreement between Plaintiff and Saketi, where Saketi was to send Plaintiff the Roohbakhsh catalog. Both the wife and daughter attested: "I also learnt that Shariar Rohani was at all-time [*sic*] aware

of the dispute and this agreement." Shariar objected and moved to strike the majority of the statements made in these declarations, including the sentence where the wife and daughter state that Shariar had knowledge of the agreement between Plaintiff and Saketi, on the basis that the declarants had no personal knowledge of the facts within the declaration, made conclusory statements, attested to hearsay, and failed to state facts because the statements were made on information and belief. The court granted Shariar's motions in their entirety, indicating that the declarations failed to demonstrate the requisite personal knowledge and competency to attest to such information. On appeal, Plaintiff argues that the court erred in striking the declarations because both declarants "were directly involved with [the] dispute before filing of the action and . . . have sworn under penalty of perjury as to personal knowledge of the facts of the case."

"The same rules of evidence that apply at trial also apply to the declarations submitted in support of and in opposition to motions for summary judgment. Declarations must show the declarant's personal knowledge and competency to testify, state facts and not just conclusions, and not include inadmissible hearsay or opinion." (*Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 761); Evid. Code, §702 ["[T]he testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter."].) "Personal knowledge means a present recollection of an impression derived from *the exercise of the witness's own senses*. [Citation.] A witness cannot competently testify to facts of which he or she has no personal knowledge. [Citation.]" (*Alvarez v. State of California* (1999) 79 Cal.App.4th 720, 731 (italics added), overruled on other grounds in *Cornette v. Department of Transportation* (2001) 26 Cal.4th 63, 74, fn. 3; Evid. Code, § 702.)

In their declarations, Plaintiff's ex-wife and daughter stated that they have learned some of the information that they attested to from Plaintiff and Saketi. To the extent the ex-wife and daughter repeat out of court statements told to them by Plaintiff and Saketi, their declarations contain inadmissible hearsay. As to the other facts in their declarations, the ex-wife and daughter failed to provide any explanation for the source of their knowledge. Neither declarant stated that they had any first hand involvement in the

creation of the contract between Plaintiff and Saketi, or any dealings with Defendants. As to the particular statement at issue here that Shariar was aware of the contract between Plaintiff and Saketi, there is no explanation whatsoever regarding how either declarant witnessed this fact. The declarations, particularly the paragraphs regarding Shariar's knowledge of the contract, fail to state how either declarant learned the information from the exercise of their own senses. Thus, Plaintiff's ex-wife and daughter are incompetent to testify to the majority of the facts in their declaration, especially as to Shariar's knowledge of the alleged contract between Plaintiff and Saketi.

To the extent that Plaintiff argues that these declarations should be liberally construed because they are offered in support of the opposition to the motion for summary judgment, we do not apply that rule in such a manner that it defeats the purpose of summary judgment and the rules of evidence. The Court of Appeal addressed a similar argument in *Snider v. Snider* (1962) 200 Cal.App.2d 741, 751 (*Snider*), when the plaintiff in that case opposed the defendant's motion for summary judgment, relying heavily on an affidavit that restated the ultimate facts alleged in the complaint, failed to set forth facts in particularity, and lacked details concerning how the declarant had knowledge of the facts in her declaration. The plaintiff urged the court that her affidavit was sufficient because the court was required to liberally construe the affidavit in support of her opposition to the motion for summary judgment. (*Ibid.*) The court disagreed, stating that "[i]f plaintiff's contentions were upheld, all that any plaintiff would have to do would be to repeat the allegations of his complaint in his counteraffidavit. In such event, no matter how groundless the complaint, no summary judgment could ever be had. The object of the procedure for summary judgment, which . . . is to discover proof and thus sham pleading, would be frustrated. [Citations.] The rule of liberal construction should not be applied to the affidavits in opposition to the motion, in such a way as to defeat the very purpose of the procedure." (*Id.* at p. 752.)

Likewise, Plaintiff cannot defeat summary judgment simply by having his daughter and ex-wife repeat the allegations of the complaint in their declarations. Their declarations attempt to accomplish the same objective as the affidavit at issue in *Snider*: attest to ultimate facts of the case without any facts indicating how the declarants came to know this information based on their own perceptions and senses. Although we construe the opposing party's declarations liberally, Plaintiff still must adhere to the rules of evidence and establish each witness's competency and personal knowledge.

As these declarations are insufficient in this regard, we affirm the court's order striking the paragraphs where Plaintiff's ex-wife and daughter attest to Shariar's knowledge of the contract. This evidence therefore does not create a triable issue of material fact for Plaintiff to rebut Shariar's motion for summary judgment.

Plaintiff failed to meet his burden of production in opposing Shariar's motion for summary judgment. We therefore affirm the trial court's summary judgment as to the interference with contractual relations cause of action in favor of Shariar.

2. *Plaintiff's Alleged Damages Are Too Remote, Speculative, and Uncertain to State a Claim for Fraud*

In the motion for summary judgment, Shariar asserted that Plaintiff failed to plead fraud with specificity. As explained in *Taylor v. Lockheed Martin Corp.* (2000) 78 Cal.App.4th 472 (*Taylor*), "[w]hen a motion for summary judgment challenges the sufficiency of the pleadings rather than the evidence supporting the allegations contained therein, it is tantamount to a motion for judgment on the pleadings and may be treated as such by the trial court. [Citation.]" (*Taylor,* at p. 479.) "A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege facts sufficient to state a cause of action. (Code Civ. Proc., § 438, subd. (c)(3)(B)(ii).) A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review." (*Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672.) "All properly pleaded, material facts are deemed true, but not contentions, deductions, or conclusions of fact or law . . . ." (*Ibid.*)

At issue is whether Plaintiff sufficiently pleaded fraud. " 'The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.' " (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638 (*Lazar*).) Because fraud allegations are a serious attack on the defendant's character, the plaintiff must plead such allegations with specificity. (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1469 (*Cansino*).) This means that the plaintiff must plead facts showing how and by what means the representations were made, and identify to whom and where the representations were communicated. (*Ibid.*, citing *Lazar*, at p. 645.) The plaintiff must also plead damage, as it is essential to fraud. (*Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1016–1017.) Even if the misrepresentation or deception is maliciously made, it cannot support a fraud cause of action unless the plaintiff incurred consequential damages as a result of it. (*Id.* at p. 1017; *Goehring v. Chapman University* (2004) 121 Cal.App.4th 353, 364 (*Goehring*).)

In his first amended complaint, as to the second cause of action for fraud and deceit, Plaintiff alleged that "[o]n several occasions during the month of August of 2009, while Saketi was still in the United States, [P]laintiff was promised by [D]efendants that they would soon release the Roohbakhsh catalog which they had unlawfully obtained by interfering with [P]laintiff's legal and binding contract with Saketi." Plaintiff alleged that "[D]efendants had no intentions of performing [the promise]." Plaintiff also stated that the promise was "made by [D]efendants with the intent to induce Saketi into severing his contract with [P]laintiff and also to induce [P]laintiff into retracting his intentions of taking actions against the [D]efendants and Saketi while Saketi was still in the United States. [Plaintiff] intended to file a suit against Saketi while he was still in the United States." As to damages, Plaintiff alleged that "[i]n reliance on the promise of the [D]efendants, the [P]laintiff did not take any adverse actions against the [D]efendants and Saketi and waited for them to release the catalog on their own accord. If the [P]laintiff had known of the actual intentions of the [D]efendants, the [P]laintiff would have taken

action against Saketi before his departure from United States, in which case Saketi would have surely treated the matter differently."

First, Plaintiff's cause of action for fraud is insufficiently pleaded because Plaintiff fails to support his allegations with details necessary to allege fraud. Plaintiff generally states that Defendants made misrepresentations, but fails to identify what each Defendant communicated. Plaintiff does not state how the representations were made, or whether they were verbal or written. Without any specific date or time, Plaintiff generally identifies August 2009 when Saketi was in the United States as when the misrepresentation occurred. This broad time frame is not specific enough to plead fraud. Plaintiff also does not state the location where the misrepresentations allegedly occurred.

Second, Plaintiff's alleged damages are too speculative and uncertain to support a cause of action for fraud. "If the existence—and not the amount—of damages alleged in a fraud pleading is 'too remote, speculative or uncertain,' then the pleading cannot state a claim for relief." (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 202, citing *Block v. Tobin* (1975) 45 Cal.App.3d 214, 219.) In order to recover for fraud, the damages alleged " 'must be such as follows the act complained of as a legal certainty . . . .' [Citation.]" (*Goehring, supra,* 121 Cal.App.4th 353, 364.) Here, Plaintiff alleges that he was damaged by not being able to bring a lawsuit against Saketi within the United States. These alleged damages depend entirely on Plaintiff's ability to succeed in a lawsuit against Saketi, and are too speculative and uncertain to be proven.

In *Agnew v. Parks* (1959) 172 Cal.App.2d 756, 769 (*Agnew*), the Court of Appeal analyzed a similar example of insufficiently pleaded fraud damages. The suit in *Agnew* stemmed out of a series of trials for a medical malpractice action which Plaintiff had brought against her treating physician. (*Id.* at pp. 760-761.) Before succeeding in her suit against the treating physician, the plaintiff's case had been dismissed twice (both dismissals were reversed on appeal). (*Ibid.*) In the *Agnew* case, the plaintiff sued her medical expert from the malpractice case and others, alleging that during those prior two trials, they conspired to falsely represent to the court and to the plaintiff that the expert was a disinterested and unprejudiced witness, who did not know the parties and would

provide the court with independent testimony. (*Id*. at pp. 766, 767.) The plaintiff alleged that the expert actually knew the treating physician, and made contrary representations to mislead the plaintiff and inhibit her success at trial. (*Id.* at p. 767.)

The *Agnew* court explained that the "gist of the alleged conspiracy is fraud." (*Agnew, supra,* 172 Cal.App.2d at p. 767.) The court explained that "the damage plaintiff would have suffered could only have been due to her failure to prevail in her suit and the resulting legal expense to her, the recovery of which would depend upon whether the outcome of the trial would otherwise have been successful; and to show this she must plead and prove a good cause of action for malpractice against [the treating physician], [the medical expert] actually gave prejudiced testimony, his fraud caused the trial judge to enter the judgment of nonsuit against her, and had the cause gone to the jury she would have prevailed and in a definite amount." (*Id*. at p. 768.) The court concluded that "[d]amage to be subject to a proper award must be such as follows the act complained of as a legal certainty and we conclude that the difficulty in ascertaining damages herein is insurmountable [citations], they are too remote, speculative and uncertain [citations] . . . [because] the damage depends on the act of a third person or the happening of a certain event." (*Ibid*.)

Likewise, the damages alleged here cannot be ascertained to a legal certainty. Plaintiff's success against Saketi in court is entirely too remote, speculative, and uncertain, as it is dependent on non-existent information and assumptions. We too conclude that the difficulty in establishing damages for Plaintiff's fraud cause of action is insurmountable. This particular flaw is fatal to Plaintiff's fraud claim and cannot be remedied by amendment to the pleading clarifying or detailing the facts of this case.

To the extent that Plaintiff asserts that the court already considered and ruled against this insufficient pleading argument and thus cannot rule in favor of Shariar, Plaintiff misconstrues the record and provides no legal authority to support his argument. " 'Appellate briefs must provide argument and legal authority for the positions taken. "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." ' [Citation.] 'We are

not bound to develop appellants' arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived.' " (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939.) Although Shariar argued that Plaintiff insufficiently pleaded his fraud cause of action in a demurrer, the court never addressed the argument and overruled the demurrer on other grounds. We see no reason why Shariar may not raise that unaddressed argument in his motion for summary judgment.

Based on the pleading deficiencies and the fact that any damage Plaintiff may have suffered is too uncertain to support a claim for fraud, we affirm the court's grant of summary judgment as to fraud.

3. *The Trial Court Had Jurisdiction to Award Costs After Rendering Judgment*

Plaintiff also appeals Shariar's award of costs. Pursuant to Code of Civil Procedure section 1032, the court must award the prevailing party its costs in any action or proceeding, absent statutory authority providing otherwise. (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 128-129.) Here, the court entered judgment on December 4, 2012, finding in favor of Shariar on the motion for summary judgment. In the judgment, the court ordered Plaintiff to pay costs of suit to Shariar pursuant to a memorandum of costs, but stated no specific amount to be paid. The court then ruled on Plaintiff's motion to tax costs on January 9, 2013 and found in favor of Plaintiff with regard to taxing jury fees. The court accordingly struck the jury fees from the cost bill, approved all other claimed costs, and ordered Plaintiff to pay Shariar $975.00 in costs.

Plaintiff argues that the court "prematurely signed the judgment while Plaintiff's . . . [m]otion to [s]trike [Shariar's costs] was awaiting a hearing." Plaintiff asserts that at the time the court taxed the award of costs pursuant to Plaintiff's requests, the court had lost its jurisdiction to alter its ruling because it had already signed the judgment. We disagree.

Where "the trial court had jurisdiction to resolve the dispositive issue between the parties . . . and to enter a judgment of dismissal based thereon, . . . the trial court also had jurisdiction to award costs." (*Brown v. Desert Christian Center* (2011) 193 Cal.App.4th 733, 740 (*Brown*).) This is because once a court acquires fundamental jurisdiction over the parties,[2] a court's jurisdiction " 'continues to final judgment and in subsequent proceedings incidental thereto.' [Citation.]" (*Goldman, supra,* 160 Cal.App.4th at p. 264, italic omitted [analyzing Code of Civil Procedure section 410.50].) Orders awarding trial court costs are incidental to the final judgment. (*Brown,* at pp. 740-741; *Douglas v. Willis* (1994) 27 Cal.App.4th 287, 290; *People v. One 1937 Plymouth 6* (1940) 40 Cal.App.2d 38, 40.)

Trial courts often issue postjudgment orders awarding costs after rendering a judgment on the merits, and that award of costs is separately appealable. (*DeZerega v. Meggs* (2000) 83 Cal.App.4th 28, 43; *Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 46.) Trial courts may also include an award of costs in the judgment, as the trial court did in this case. "When a judgment includes an award of costs and fees, often the amount of the award is left blank for future determination. (See, e.g., *UAP–Columbus JV 326132 v. Nesbitt* (1991) 234 Cal.App.3d 1028, 1039 [285 Cal.Rptr. 856].) After the parties file their memoranda of costs and any motions to tax, a postjudgment hearing is held and the trial court makes its determination of the merits of the competing contentions. When the order setting the final amount is filed, the clerk enters the amounts on the judgment nunc pro tunc." (*Grant v. List & Lathrop* (1992) 2 Cal.App.4th 993, 996-997.) Notably, "when the judgment awards attorney fees but does not determine the amount, the judgment is deemed to subsume the postjudgment

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[2] Fundamental jurisdiction is established by personal jurisdiction over the parties and proper service of process. (*Goldman v. Simpson* (2008) 160 Cal.App.4th 255, 263-264 (*Goldman*).) Additionally, "the court in which the action is pending must be competent to hear and decide the type of action and the amount in controversy that are involved in the case." (*Id*. at p. 263.) Plaintiff has not disputed these elements of fundamental jurisdiction, and based on our review of the record, we conclude that the court properly exercised jurisdiction over the parties and this matter.

order determining the amount awarded, and an appeal from the judgment encompasses the postjudgment order." (*R. P. Richards, Inc. v. Chartered Construction Corp.* (2000) 83 Cal.App.4th 146, 158, citing *Grant*, at p. 998.) In sum, a trial court continues to have jurisdiction to award costs or issue an order setting the final amount of costs after rendering final judgment.

Here, the court properly entered judgment against Plaintiff, stating that Plaintiff must pay Shariar's costs. The amount of costs was later determined by the court after considering Plaintiff's motion to strike and taxing Shariar's claimed costs. Contrary to Plaintiff's assertions, no judicial error occurred and the court's jurisdiction continued over this subsequent proceeding that was incidental to the final judgment. As Plaintiff does not raise any other arguments regarding the award of costs and because the court had jurisdiction to make the fee award, we affirm the trial court's award of costs.

DISPOSITION

The judgment and order are affirmed on all grounds. Defendant Shariar Rohani is awarded his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

I concur:

EDMON, P. J.

ALDRICH, J.